IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8107 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRABEN KIRANCHAND VASANI & 1 - Petitioner(s)

Versus

MANJULBA NARANRAO PAVAR - Respondent(s)

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Appearance :

MR SHAMIK SANJANWALA for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1.2.1,1.2.2

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 28/10/2005

ORAL JUDGMENT

1.Heard learned advocate for the petitioner Mr.Shamik S. Sanjanwala.

2.The present petition is filed against the order passed

below Exh.62 by the learned Civil Judge (J.D.), Valsad dated 18.11.2003, whereby the learned Judge has exercised the discretion in favour of the defendant – applicant permitting him to file the written statement in the suit filed by the present petitioners.

3. It is true that in the case of Kailash V/s Nanhku and others, reported in 2005 AIR SCW 2346 and other two subsequent decisions, the Apex Court has observed that embargo of filing the written statement beyond the prescribed period of 90 days in the relevant rule is directory and in a given case, the court can grant permission to file the written statement even beyond that period. I have considered the ratio of these three decisions which says that in a given case and in the background of the facts and circumstances emerging from the record, such discretion should be exercised and the permission can be granted, so that, the defendant may not remain undefended in the suit. The facts in the case of Kailash V/s Nanhku (supra) are glaring and the facts of the present case are far away from that case. In the present case, the respondent – defendant had not cared to file the written statement for about three years after service of summons. The learned Judge, while granting the application, has not even considered

that no grave fact situation for not filing the written statement in a reasonable time or within first 90 days are not even stated in the application. It is true that the suit is of 1999 and the effect of the amendment in the rule is given from 1.7.2002. So, till that date, the defendant may not be that aware about the effect of his conduct of not filing the written statement at the earliest after service of the summons. The application even was not preferred praying necessary permission till 6.5.2003 and that too after filing of the application by the original plaintiffs under Order 8 Rule 10 on 28.1.2003. I would like to reproduce the relevant paras of the decision in the case of Kailash V/s Nanhku (supra) which are found relevant for the present order. Paras 40 and 41 read as under :

> “40. Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provisions is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be

misunderstood as nullifying the entire force and impact – the entire life and vigour – of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidates may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may loose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

41. Ordinarily, the time schedule prescribed by Order VIII Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether

within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended."

4. So, even if it is held by the Apex Court that the scheme of Order 8 Rule 10 is directory, permission to file the written statement at any later stage should not be granted as a matter of course or construing of the situation liberally. So, the petition is allowed. However, it is clarified that rejection of the application by this order granted earlier by the lower court shall not make the present petitioners entitled to have stayed the decree but they shall have to prove their case on merits, because, the defendant, even in

absence of the written statement, can still disprove the case of the plaintiffs on merits. Rule is made absolute. No costs.

(C.K.BUCH, J)

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